

**MINUTES**  
**BEECH MOUNTAIN TOWN COUNCIL**  
**Regular Meeting – October 10, 2017**

- I. *CALL TO ORDER*** – Mayor E. ‘Rick’ Miller called the regular meeting of the Beech Mountain Town Council to order at 4:00 p.m., Tuesday, October 10, 2017 in the Town Hall Council Chambers located at 403 Beech Mountain Parkway Beech Mountain North Carolina 28604. Other Council Members present were Paul Piquet, Rick Owen, Wendel Sauer, and Renee Castiglione. A quorum was present. Town Attorney Stacy C. Eggers, IV was present. Staff members present included Town Manager Tim Holloman, Town Clerk Jennifer Broderick, Finance Officer Steve Smith, Public Utilities Director Robert Heaton, Public Works Director Riley Hatch, Fire Chief Bob Pudney, Police Chief Tim Barnett, Building Inspector John Merritt, Tax Administrator Rebecca Ward, and Director of Tourism and Economic Development Kate Gavenus.
- II. *Invocation*** – Town Manager Tim Holloman presented the invocation.
- III. *Pledge of Allegiance*** – All present joined in the Pledge of Allegiance to the flag.
- IV. *Adoption of Agenda*** – Councilman Sauer motioned to approve the amended agenda. Councilwoman Castiglione seconded the motion, the vote carried unanimously.
- V. *Consent Agenda*** – Mayor Miller opened the floor for Council to take action on the consent agenda. Councilman Sauer motioned to approve the consent agenda. Vice Mayor Piquet seconded the motion, the vote passed unanimously. The consent agenda was approved as follows with consent agenda item ‘d’ attached as Exhibit A, consent agenda item ‘e’ attached as Exhibit B, consent agenda item ‘f’ attached as Exhibit C, and consent agenda item ‘g’ attached as Exhibit D. Exhibits A thru D are incorporated by reference as if fully set out within these minutes.
- a. August 8, 2017 – Closed Session
  - b. September 12, 2017 – Regular Meeting
  - c. September 12, 2017 – Closed Session
  - d. Buckeye Playground / Perry Park Renovation
  - e. Budget Amendment #3-2018
  - f. Proclamation Recognizing Young Marines National Red Ribbon Week
  - g. Resolution No. 2017-09: ‘*Resolution of Appreciation to the Great City of Raleigh for their Support of the North Carolina League of Municipalities*’

**VI. Public Comment** – Phillip Solar, of 320 St. Andrews, stated that he was before Council concerning a fine in the amount of \$8,000 for tree cutting violations from the town. Mr. Solar stated the town's Board of Adjustment did not find in favor of the Solars, nor did the Watauga County Superior Court or Appellate Court where the Solars also lost. Mr. Solar informed Council that they did not cut the trees. Mr. Solar informed Council that no one saw anyone do anything. Roberta Lewis Solar, of 320 St. Andrews, stated that the Solars had to go to four attorneys to find an attorney that would respond. This case was based on no proof and has cost the Solars \$40,000. Mrs. Solar stated that they are still making monthly payments to Attorney Eggers office for the fine. Attorney Eggers stated that he has been in communication with the attorney representing the Solars. Attorney Eggers stated that he was happy to speak with Attorney Moffitt who represents the Solars. Attorney Eggers stated that the Solars have a payment plan in place.

**VII. New Business**

**a. Proclamation Honoring the Life of Reuben Mooradian** – Mayor Miller read aloud the Proclamation Honoring the Life of Reuben Mooradian. Mayor Miller presented Barbara Mooradian with a Proclamation Honoring the Life of her husband Reuben Mooradian. Mrs. Mooradian received a round of applause for the good work her husband did for the community. Vice Mayor Piquet motioned to approve the Proclamation Honoring the Life of Reuben Mooradian. Councilwoman Castiglione seconded the motion, the vote passed unanimously. The *Proclamation Honoring the Life of Reuben Mooradian* is attached as Exhibit E and is incorporated by reference as if fully set out within these minutes.

**VIII. Public Hearing**

**a. Public Hearing to Closeout Town of Beech Mountain Community Development Block Grant #04-D-2705** – Vice Mayor Piquet motioned to open the public hearing. Councilman Sauer seconded the motion, the vote passed unanimously. Michelle Ball, Regional Planner with High Country Council of Government – Region D, stated that the purpose of the public hearing was to provide public input. The town was a recipient of a \$50,000 grant from the North Carolina Department of Commerce Division of Community Assistance Small Cities Community Development Block Grant Program. The trainings were also open to Watauga County, Town of Blowing Rock, Town of Seven Devils, and Town of Boone. Mrs. Ball read aloud the names of the attendees and the classes that were attended. Vice Mayor Piquet motioned to close the public hearing. Councilman Sauer seconded the motion, the vote passed unanimously.

**b. *Public Hearing to Amend Street Address Ordinance §154.272* –**

Councilman Sauer motioned to open the public hearing. Vice Mayor Piquet seconded the motion, the vote passed unanimously. Town Planner Rich Gibbs stated that the Planning Board had been working on the town's street address ordinance to strengthen public safety. Areas addressed were size of numbers, location of numbers, and reflectivity. Hearing no public comment Vice Mayor Piquet motioned to close the public hearing. Councilman Sauer seconded the motion, the vote passed unanimously.

**IX. *New Business***

**a. *Water Plant Replacement Project Update*** – Public Utilities Director Robert Heaton informed Council that today is the 751 day since the notice to proceed. As of Change Order No. 6, the deadline for substantial completion was April 3, 2017 and Final Completion May 31, 2017. These dates will be extended slightly due to some extra work the town requested. Substantial completion of the major elements of the project was achieved on August 22, 2017 and the plant began producing water. Final completion is expected this month. The contractor is working on a punch list of items to be addressed before the final payment. Work completed through pay request 25 equals 98%. This figure is as of September 25, 2017. Most work is complete with the following major exceptions: crack and joint repair in second of two settling basins, demolition of old treatment units, and various smaller items. Pay request number 25 has been submitted in the amount of \$167,793.75 and was approved by the Engineer. Recent water quality test data shows that the new water plant is achieving better turbidity, iron, and manganese removal than the old plant. A CT test was also performed on September 21, 2017 which showed that the clear well baffles increased detention time, which in turn improves the effectiveness of disinfection. Councilwoman Castiglione thanked staff stating that there was a lot of good work that went into the Grand Opening and that everything went very well.

**b. *Occupancy Tax Collection Proposal*** – Manager Holloman stated that Council had before them a proposal from STR to assist with the collection of the town's occupancy tax. The town's Tourism Development Authority reviewed and approved this companies service at their September 6, 2017 meeting. The cost for service initially received was \$15,000. Since then the company has increased this cost but has informed the town that they will honor the \$15,000 proposal they had first offered. The company estimates a forty to fifty percent increase in the town's occupancy tax collection. Staff is projecting a little lower at thirty to forty percent. Attorney Eggers recommended changes to the proposal are included in the proposal in front of Council. Director of Tourism and Economic Development Kate Gavenus

stated that staff has already increased occupancy tax collections by \$45,000. Should Council move forward with this proposal Tax Administrator Rebecca Ward and Mrs. Gavenus were going to track data on the increase to determine what percentage of the increase was from new individuals paying occupancy tax. Manager Holloman stated the town does currently receive occupancy tax from companies like Vacation Rental By Owner (VRBO) and Airbnb but that these companies do not share owner information. Mayor Miller questioned if property owners renting and not advertising online would be missed with this process. Mrs. Ward stated that occasionally individuals call and report their neighbors renting. If the property is not on the occupancy tax list staff sends a letter to the property owner. Attorney Eggers informed Council that the contract before them had an automatic renewal clause for a second year of service. The contract required a letter of notification confirming termination sent sixty days prior to the end of the first year in order to stop the service. Vice Mayor Piquet confirmed that \$15,000 was for one year of service and that the Tourism Development Authority Board was agreement to pay half of the cost. Manager Holloman confirmed this was correct. Manager Holloman stated that if Council did approve this proposal staff would start the process approximately ninety days from now. Councilman Owen questioned how staff had increased revenue dollars. Mrs. Gavenus stated that we are in a period where we might naturally see some increases due to the efforts that staff has already put forward. Councilman Owen questioned if it is a service to locate and collect occupancy tax. Councilman Owen questioned the 3% fee for collecting. Manager Holloman stated that the company will not be collecting town dollars and that this would still be a function of staff. Councilman Owen questioned if they were keeping the records offsite. Mrs. Ward confirmed that the records would be maintained by the company off site. Councilman Owen stated that one of the challenges with using companies like this is distinguishing the location of properties due to so many locations sharing the same zip code. Manager Holloman stated that the company used additional data to filter records. Councilman Owen stated that this could be a good topic for the High Country Municipal Association. Hearing no more discussion Mayor Miller asked if there was a motion. Councilman Sauer motioned to approve the proposal. Vice Mayor Piquet seconded the motion; the vote passed unanimously. The Bear Cloud Software SaaS Agreement (STR) is attached as Exhibit F and is incorporated by reference as if fully set out within these minutes.

## ***X. Town Manager and Staff Reports***

***Rick Owen*** – Manager Holloman stated that Councilman Rick Owen was recognized by the North Carolina League of Municipalities at their Annual

Conference in Greenville, NC for his 21 years and 8 months of service to the Beech Mountain community as an Elected Official.

***Water Treatment Plant Grand Opening and Ribbon Cutting Ceremony***

– Manager Holloman stated that the grand opening held this past Friday, October 6, 2017 had a good turnout and was well complimented.

***XI. Town Council Comments***

***Police Report*** – Councilman Sauer verified information about security checks on the Police Report with Police Chief Tim Barnett.

***Fred's General Store Named one of "The South's Most Charming General Stores" by Southern Living*** – Councilwoman Castiglione congratulated Fred's General Mercantile for receiving Southern Living's designation as one of *The South's Most Charming General Stores*.

***Community Involvement*** – Councilwoman Castiglione stated that Jack Van Zandt reads the Town Council minutes that are available online and is always stating that we are doing good work. Councilwoman Castiglione encouraged the public to look online at the minutes, attend meetings, and to speak during public comment.

***Board Applications*** – Councilwoman Castiglione stated that the Council is receiving applications to participate on the town's committees. If you are a full time resident, or a part time resident, and meet any residency requirements for the Board you would like to participate on Council would love to have you complete an application to serve on one of our committees. Applications are available online.

***Wayne Palmer Johnson*** – Councilwoman Castiglione stated that Police Captain Renee Carpenter had lost her father, Wayne Palmer Johnson, over the weekend. Police Chief Tim Barnett stated the service for Mr. Johnson is scheduled for 11 am at Palmer Cemetery on Buck Mountain.

***Fred's General Store Named one of "The South's Most Charming General Stores" by Southern Living*** – Mayor Miller commended Fred's General Mercantile for the recognition they received from Southern Living.

***Reuben Mooradian*** – Mayor Miller stated that Reuben Mooradian would be missed. Councilman Owen stated that Mr. Mooradian would be missed and recalled a time when they had all three worked together on town business.

*Mayor Miller stated that Council would take a short break at 4:46 p.m.*

**XII. Closed Session – Pursuant to NC GS §143-318.11(a)(3) Attorney Client Matters** – At 4:55 p.m., Vice Mayor Piquet moved to enter closed session pursuant to N.C. Gen. Stat. §143-318.11 (a)(3) for the purpose of discussing attorney-client matters, including *Roberta B. Lewis-Solar and Phillip M. Solar v. Town of Beech Mountain, Town of Beech Mountain v. Milligan*. The motion was seconded by Councilman Sauer and passed unanimously. Upon motion by Councilman Sauer, seconded by Councilwoman Castiglione, the Council voted unanimously to exit closed session at 6:31 p.m.

**XIII. Other Business**

**a. Vote to Closeout Town of Beech Mountain Community Development Block Grant #04-D-2705** – Vice Mayor Piquet motioned to approve the Closeout of the Town of Beech Mountain Community Development Block Grant #04-D-2705. Councilwoman Castiglione seconded the motion, the vote passed unanimously. The Closeout of the Town of Beech Mountain Community Development Block Grant #04-D-2705 is attached as Exhibit G and is incorporated by reference as if fully set out within these minutes.

**b. Vote on Ordinance to Amend Street Address Ordinance §154.272** – Vice Mayor Piquet motioned to approve Ordinance No. 2017-08 ‘*An Ordinance Amending Address Numbering*’. Councilman Sauer seconded the motion; the vote passed unanimously. Ordinance No. 2017-08: *An Ordinance to Amend Street Address Ordinance §154.272* is attached as Exhibit H and is incorporated by reference as if fully set out within these minutes.

**XIV. Adjourn** – At 6:34 p.m., Vice Mayor Piquet moved to adjourn, which was seconded by Councilman Sauer. The motion passed unanimously.

Minutes approved by Town Council on November 14, 2017.

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E. ‘Rick’ Miller, Mayor

ATTEST:

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Jennifer Broderick, MMC  
Town Clerk

**ATTACHMENT TO MINUTES  
BEECH MOUNTAIN TOWN COUNCIL  
Regular Meeting – October 10, 2017**

**EXHIBIT A** – Buckeye Playground / Perry Park Renovation

**EXHIBIT B** – Budget Amendment #3-2018

**EXHIBIT C** – *Proclamation Recognizing Young Marines National Red Ribbon Week*

**EXHIBIT D** – Resolution No. 2017-09: *Resolution of Appreciation to the Great City of Raleigh for their Support of the North Carolina League of Municipalities*

**EXHIBIT E** – *Proclamation Honoring the Life of Reuben Mooradian*

**EXHIBIT F** – Bear Cloud Software SaaS Agreement (STR)

**EXHIBIT G** – Closeout of the Town of Beech Mountain Community Development Block Grant #04-D-2705

**EXHIBIT H** – Ordinance No. 2017-10: *An Ordinance to Amend Street Address Ordinance §154.272*

## **AGREEMENT**

10-4-17

Agreement made this 20th day of September 2017 between **Beanstalk Builders LLC** of Burke County, North Carolina, herein referred to as "Seller" and **Town of Beech Mountain** of Watauga/Avery County, State of North Carolina, herein referred to as "Buyer."

NOW, in consideration of the promises and mutual covenants contained in this Agreement, the parties hereto agree as follows:

1. Seller shall sell, begin construction, and/or deliver products to Buyer on agreed date, for the following, herein referred to as the "goods".

Design specifications:

- Removal of 8 perimeter hemlock logs
- Replace with natural peeled black locust logs (logs will be approximately 12" diameter)
- Staining structure
- Flashing on top of logs
- Sealant on bottom of logs
- Labor and travel expenses

Items provided by Buyer:

- Removing logs from site
- Use of machine for duration of project

2. The goods shall be delivered and erected at **Buckeye Recreation Center, State of North Carolina**, and shall be deemed received by Buyer when so delivered and/or erected.

3. Buyer shall accept the goods and pay the sum of \$14,290 for the goods.

4. Buyer agrees to pay Seller according to the following pay schedule:

- 50% of total project cost deposit required to begin construction.
- 50% of total contract cost upon completion of project, plus any equipment or services ordered by **Buyer** that are not included in this agreement, no later than 10 business days after completion of project. A 2% late fee will be charged each month until payment is received.

\*Locating and Relocation of any underground utilities is the responsibility of the Buyer

\*No financial contingencies have been included for poor site conditions, including but not limited to the following: sub-grade rock/soil that has to be drilled for pole placements or guy wire anchor placements; high ground water level, standing water or springs; soft/unstable soils; low load-bearing soils; and, unforeseen subsoil debris (stumps, stump holes, old septic areas, rocks, concrete, etc.). If such conditions are incurred, expenses associated with managing these conditions will be billed at market costs.



**5.** Seller warrants that the goods are now free, and that at the time of delivery shall be free, from any security interest or other lien or encumbrance.

**6.** Seller warrants that the goods shall be free from structural defects and defects in workmanship under normal use and service, the obligation of Seller under this warranty being limited to repairing and/or replacing any part of the goods which shall within two year after the date of substantial completion of the goods. This warranty covers only such defects that are reported to Seller in writing within one year of substantial completion. Seller shall have no obligation to repair or replace any part of the goods damaged by normal wear and tear, misuse, vandalism, act of God or other cause not the act of Seller. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER.

**7.** This Agreement and the attached agreement contains the entire agreement between Buyer and Seller, and all agreements entered into prior to or contemporaneously with the execution of this Agreement are excluded whether or not in writing. All changes, additions or deletions hereto must be in writing and signed by Buyer and Seller.

**8.** Conflicts arising from this Agreement shall lie exclusively within the jurisdiction of the laws and courts of the State of North Carolina and this Agreement shall be governed by and interpreted under the laws of North Carolina excluding its conflict of laws provisions. In the event of breach of this Agreement, the breaching party shall be liable for all reasonable attorney's fees and costs necessary to enforce this agreement by the non-breaching party.

**9.** Each party to this Agreement shall, indemnify, defend, and hold harmless the other party (and its parents and Affiliates, and each of its respective officers, directors, shareholders, agents, employees, and owners) from and against any and all demands, settlements, claims, damages to persons or property, losses and liabilities, including reasonable attorneys' fees (collectively, "claims"), arising solely out of or solely caused by: (I) the breach or allege breach of contract of any of its representatives, warranties or obligations herein; or (II) the indemnifying party's gross negligence or willful misconduct in connection with the provision and use of Buyer as contemplated by this Agreement.

**10.** The completion date of this contract shall be extended due to unforeseeable cause reasonably beyond the control of Seller. Such causes include, but are not limited to, delays in payment, bad weather, acts of God, regulations or orders of governmental authorities, emergency making it impossible, illegal, or otherwise inadvisable to continue construction. Seller reserves the right to cease work if payment is late.

**11.** Buyer agrees to meet with a Beanstalk Builders staff person at the beginning of the project to examine the location and confirm the layout of the course. The Buyer must also be available for routine inspection of the project, and to be available to come to the site if requested by the construction foreman.

12. Buyer agrees to monitor the unloading of any materials prior to construction, ensuring that the materials are secured and in a safe place.

**IN WITNESS WHEREOF.** Buyer and Seller have executed this Agreement as of the day and year above written.

SELLER: **BEANSTALK BUILDERS LLC**



010/04/2017

**Name**

**Date**

**Mike Fischesser**

**Manager**

BUYER: **Town of Beech Mountain**

**Buyer's authorized agent**

**Date**

**Name**

**Title**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.



Steve Smith, Finance Officer

Town of Beech Mountain

10/04/17

Date

**TOWN OF BEECH MOUNTAIN, NORTH CAROLINA  
2017-2018 BUDGET ORDINANCE  
AMENDMENT # 3-2018**

**TO THE ORDINANCE APPROPRIATING FUNDS FOR THE  
OPERATING EXPENSES FOR TOWN OF BEECH MOUNTAIN**

**BE IT ORDAINED BY THE TOWN OF BEECH MOUNTAIN TOWN COUNCIL:**

**A. EXPENDITURES**

1. To provide for increases and/or (decreases) in existing Funds:

a. General Fund:

1. Recreation Department

Building and Grounds Maintenance \$25,000

**TOTAL ADJUSTMENT TO EXPENDITURES** \$25,000

**B. REVENUES**

1. To provide for adjustments to revenues:

a. Appropriated Fund Balance \$25,000

**TOTAL ADJUSTMENT TO REVENUE** \$25,000

<b>C. FY 2017 – 2018 Original Budget</b>	<b>\$6,785,588</b>
<b>FY 2017 – 2018 Amendment # 1</b>	<b>35,000</b>
<b>FY 2017 - 2018 Amendment #3</b>	<b>25,000</b>
<b>FY 2017– 2018 Amendment #4</b>	<b><u>26,150</u></b>
<b>FY 2017 – 2018 Amended Budget</b>	<b><u>\$6,871,738</u></b>

APPROVED THIS THE 10<sup>TH</sup> DAY OF October 2017

\_\_\_\_\_  
Jennifer L. Broderick, Clerk

\_\_\_\_\_  
B. 'Rick' Miller, Mayor

**Council Members**

E. 'Rick' Miller, Mayor  
Paul Piquet, Vice Mayor  
Renee Castiglione  
Wendel Sauer  
Rick Owen



**Town Manager**  
Tim H. Holloman

**Town Attorney**  
Stacy C. Eggers IV

**PROCLAMATION RECOGNIZING  
YOUNG MARINES  
NATIONAL RED RIBBON WEEK**

WHEREAS, communities across America have been plagued by the numerous problems associated with illicit drug use and those that traffic in them; and

WHEREAS, there is hope in winning the war on drugs, and that hope lies in education and drug demand reduction, coupled with the hard work and determination of organizations such as the General Nathaniel Greene Young Marines to foster a healthy, drug-free lifestyle; and

WHEREAS, governments and community leaders know that citizen support is one of the most effective tools in the effort to reduce the use of illicit drugs in our communities; and

WHEREAS, the red ribbon has been chosen as a symbol commemorating the work of Enrique "Kiki" Camarena, a Drug Enforcement Administration Special Agent who was murdered in the line of duty, and represents the belief that one person can make a difference; and

WHEREAS, the Red Ribbon Campaign was established by Congress in 1988 to encourage a drug-free lifestyle and involvement in drug prevention and reduction efforts; and

WHEREAS, October 23-31 has been designated National Red Ribbon Week, which encourages Americans to wear a red ribbon to show their support for a drug-free environment;

**NOW, THEREFORE BE IT RESOLVED** that I, Mayor E. 'Rick' Miller, of the Town of Beech Mountain North Carolina do hereby proclaim October 23-31 as **RED RIBBON WEEK**.

Adopted this the 10<sup>th</sup> day of October, 2017.

Attest:

\_\_\_\_\_  
E. 'Rick' Miller, Mayor

\_\_\_\_\_  
Jennifer L. Broderick, MMC

**Council Members**

E. 'Rick' Miller, Mayor  
Paul Piquet, Vice Mayor  
Renee Castiglione  
Wendel Sauer  
Rick Owen



**Town Manager**  
Tim H. Holloman

**Town Attorney**  
Stacy C. Eggers IV

**RESOLUTION NO. 2017-09**

**RESOLUTION OF APPRECIATION TO THE GREAT CITY OF RALEIGH  
FOR THEIR SUPPORT OF THE NORTH CAROLINA LEAGUE OF  
MUNICIPALITIES**

WHEREAS, The North Carolina League of Municipalities was displaced from their office, the Quorum Center, located in the heart of Raleigh by a fire on March 16, 2017; and

WHEREAS, the North Carolina League of Municipalities was without office space to support their staff for a five week period of time as they searched for office space to lease; and

WHEREAS, during their time of hardship the great city of Raleigh, North Carolina's capital city, opened their offices to staff of the North Carolina League of Municipalities free of charge to continue their good work on behalf of the municipalities of this state; and

WHEREAS, the North Carolina League staff was able to use this space to quickly and effectively continue their services to their municipal membership base; and

WHEREAS, the Board of Directors for the North Carolina League of Municipalities approved a resolution thanking the great city of Raleigh for their support of the North Carolina League at their 2017 Annual Conference.

NOW, THEREFORE, BE IT RESOLVED that I, Mayor E. 'Rick' Miller, on behalf of the Town Council and the citizens of the Town of Beech Mountain, do hereby recognize and thank the great city of Raleigh, North Carolina's capital city, for the assistance they provided the North Carolina League of Municipalities in their time of need.

This resolution adopted this 10<sup>th</sup> day of October, 2017.

\_\_\_\_\_  
E. 'Rick' Miller, Mayor

Attest:

\_\_\_\_\_  
Jennifer L. Broderick, MMC

**Council Members**

E. 'Rick' Miller, Mayor  
Paul Piquet, Vice Mayor  
Renee Castiglione  
Wendel Sauer  
Rick Owen



**Town Manager**  
Tim H. Holloman

**Town Attorney**  
Stacy C. Eggers IV

**PROCLAMATION HONORING THE LIFE  
OF  
REUBEN MOORADIAN**

WHEREAS, Reuben Mooradian was born in North Attleboro, Massachusetts on February 20, 1930. After attending college at the University of Missouri he enlisted in the United States Army on July 3, 1952; and

WHEREAS, Rueben Mooradian served in the 8240th Army Unit of the United Nations Partisan Forces-Korea, two tours in Vietnam (one of the first advisors" to have learned Vietnamese) and several tours in Laos; proudly serving as one of the first Special Force soldiers, and retiring from the Army on July 31, 1971, as a Lieutenant Colonel; and

WHEREAS, upon retiring Rueben Mooradian and his wife, Barbara Mooradian, moved to the Town of Beech Mountain, North Carolina where he lived until his passing on September 19, 2017; and

WHEREAS, Rueben Mooradian was the founder of the Beech Mountain Fire Department; and

WHEREAS, Rueben Mooradian served as Fire Chief from 1974 until 1995; and

WHEREAS, following the incorporation of Beech Mountain as a Town, he served as the Town's first Mayor Pro Tem, and many years thereafter as a Council Member.

NOW, THEREFORE BE IT RESOLVED that I, Mayor E. 'Rick' Miller, of the Town of Beech Mountain North Carolina honor the life and memory of Reuben Mooradian; a man who faithfully loved his wife, served his country, and aided our community in its early growth.

Adopted this the 10<sup>th</sup> day of October, 2017.

\_\_\_\_\_  
E. 'Rick' Miller, Mayor

Attest:

\_\_\_\_\_  
Jennifer L. Broderick, MMC

## **Bear Cloud Software SaaS Agreement**

This Software as a Service (SaaS) Agreement (the "Agreement"), dated as of September 5<sup>th</sup>, 2017 (the "Effective Date"), is by and between Bear Cloud Software ("Bear Cloud Software") and The Town of Beech Mountain, NC ("Customer"), with a principal place of business at 403 Beech Mountain Parkway, Beech Mountain North Carolina, 28604

WHEREAS, Customer wishes to procure from Bear Cloud Software the software services described herein, and Bear Cloud Software wishes to provide such services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. Definitions.**

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used to verify an individual's identity and authorization to access and use the Services.

"Authorized Reseller" means an authorized distributor, authorized reseller, or dealer of the Licensed Software.

"Authorized User" means each of the individuals authorized to use the Services pursuant to this Agreement.

"Bear Cloud Software Materials" means the Licensed Software, Documentation and Bear Cloud Software Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Bear Cloud Software or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Bear Cloud Software Systems. For the avoidance of doubt, Bear Cloud Software Materials include Resultant Data and any information, data or other content derived from Bear Cloud Software's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"Bear Cloud Software Systems" means the information technology infrastructure used by or on behalf of Bear Cloud Software in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Bear Cloud Software or through the use of third-party services.

"Bear Cloud Software Website" means [www.strhelper.com](http://www.strhelper.com).

"Customer Data" means, photographs, documents (including letters sent by code enforcement authorities), and updates to property records, that are collected, downloaded or otherwise received from Customer or an Authorized User by or through the Services. Customer Data does not include Resultant Data.

"Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

"Documentation" means any manuals, instructions or other documents or materials that Bear Cloud Software provides or makes available to Customer in any form or medium and which describe the functionality,

components, features or requirements of the Services or Bear Cloud Software Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

**"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**"Licensed Software"** means Bear Cloud Software application or applications, together with any updates, and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Bear Cloud Software provides remote access to and use of as part of the Services.

**"New Version"** means any new version of the Licensed Software that Bear Cloud Software may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Bear Cloud Software's designation of a new version number), and which Bear Cloud Software may make available to Customer at an additional cost under a separate written agreement.

**"Resultant Data"** means information, data and other content that is derived by or through the Services from processing Customer Data.

**"Third Party Materials"** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Bear Cloud Software.

## 2. Services.

2.1. Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Bear Cloud Software shall use commercially reasonable efforts to provide to Customer and its Authorized Users the services described in this Agreement, including hosting, managing, operating and maintaining the Licensed Software for remote electronic access and use by Customer and its Authorized Users (collectively, the "Services") in substantial conformity with the terms of this Agreement, except for:

- a) Scheduled downtime;
- b) Service downtime or degradation due to a Force Majeure Event;
- c) any other circumstances beyond Bear Cloud Software's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express terms of this Agreement; and
- d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement.

2.2. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

- a) Bear Cloud Software has and will retain sole control over the operation, provision, maintenance and management of the Services and Bear Cloud Software Materials, including the: (i) Bear Cloud Software Systems; (ii) selection, deployment, modification and replacement of the Licensed Software; and (iii) performance of Services maintenance, updates, upgrades, corrections and repairs; and



- b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Bear Cloud Software Materials by any person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Bear Cloud Software; (ii) results obtained from any use of the Services or Bear Cloud Software Materials; and (iii) conclusions, decisions or actions based on such use.
- 2.3. Changes. Bear Cloud Software reserves the right, in its sole discretion, to make any changes to the Services and Bear Cloud Software Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Bear Cloud Software's services to its customers, (ii) the competitive strength of or market for Bear Cloud Software's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.
- 2.4. Subcontractors. Bear Cloud Software may from time to time in its discretion engage third parties to perform Services (each, a "Subcontractor").
- 2.5. Suspension or Termination of Services. Bear Cloud Software may, directly or indirectly, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other person's access to or use of all or any part of the Services or Bear Cloud Software Materials, without incurring any resulting obligation or liability, if: (a) Bear Cloud Software receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Bear Cloud Software to do so; or (b) Bear Cloud Software believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the terms of this Agreement; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated. This Section does not limit any of Bear Cloud Software's other rights or remedies, whether at law, in equity or under this Agreement.
- 3. Authorization and Customer Restrictions.
  - 3.1. Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Bear Cloud Software hereby authorizes Customer to access and use, during the Term, the Services and such Bear Cloud Software Materials as Bear Cloud Software may supply or make available to Customer solely for Customer's internal business operations, research, and educational purposes, by and through Authorized Users in accordance with the conditions and limitations set forth in this Agreement and Schedule B ("Permitted Use"). This authorization is non-exclusive and non-transferable.
  - 3.2. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Bear Cloud Software Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, Bear Cloud Software Materials and the Third Party Materials are and will remain with Bear Cloud Software and the respective rights holders in the Third Party Materials.

3.3. Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or Bear Cloud Software Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- a) copy, modify or create derivative works or improvements of the Services or Bear Cloud Software Materials;
- b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Bear Cloud Software Materials to any person, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Bear Cloud Software Materials, in whole or in part;
- d) bypass or breach any security device or protection used by the Services or Bear Cloud Software Materials or access or use the Services or Bear Cloud Software Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- e) input, upload, transmit or otherwise provide to or through the Services or Bear Cloud Software Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code ("Harmful Code");
- f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Bear Cloud Software Systems or Bear Cloud Software's provision of services to any third party, in whole or in part;
- g) remove, delete, alter or obscure any trademarks, specifications, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Bear Cloud Software Materials, including any copy thereof;
- h) access or use the Services or Bear Cloud Software Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party or that violates any applicable law;
- i) access or use the Services or Bear Cloud Software Materials for purposes of competitive analysis of the Services or Bear Cloud Software Materials, the development, provision or use of a competing software service or product or any other purpose that is to Bear Cloud Software's detriment or commercial disadvantage; or
- j) otherwise access or use the Services or Bear Cloud Software Materials beyond the scope of the authorization granted herein.

4. Customer Obligations.

4.1. Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the terms of this Agreement all Customer Systems on or through which the Services are accessed or used; (b) provide all

cooperation and assistance as Bear Cloud Software may reasonably request to enable Bear Cloud Software to exercise its rights and perform its obligations under and in connection with this Agreement; and (c) provide Bear Cloud Software with the city property data necessary for Implementation of the Licensed Software.

4.2. Effect of Customer Failure or Delay. Bear Cloud Software is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.

4.3. Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.3, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Bear Cloud Software Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Bear Cloud Software of any such actual or threatened activity.

5. Updates; Technical Support.

5.1. Updates. During the Term, Bear Cloud Software may provide Customer with periodic error corrections, enhancements, improvements, or updates, including updated Documentation, that Bear Cloud Software may, in its sole discretion, make generally available to its customers at no additional charge ("Updates"). Updates do not include New Versions. All Updates, on being provided by Bear Cloud Software to Customer hereunder, are deemed Licensed Software subject to all applicable terms and conditions in this Agreement. Customer does not have any right hereunder to receive any New Versions of the Licensed Software that Bear Cloud Software may, in its sole discretion, release from time to time.

5.2. Technical Support. The Services include Bear Cloud Software's standard technical support services, which include: (a) free technical support for all registered users of the then-current release of STR Helper and the previous release of Bear Cloud Software; and (b) any Updates provided by Bear Cloud Software during the Term ("Support Services"). Bear Cloud Software will make reasonable efforts to promptly respond to all installation and/or technical support inquiries and will respond to such inquiries within one business day.

6. Security.

6.1. Bear Cloud Software Systems and Security Obligations. Bear Cloud Software will employ security measures in accordance with its data privacy and security policy as amended from time to time, as available on the Bear Cloud Software Website ("Privacy Policy").

6.2. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Bear Cloud Software Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

- 6.3. Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

7. Fees; Payment Terms.

- 7.1. Fees. Customer shall pay Bear Cloud Software the fees set forth in Schedule A ("Fees") in accordance with this Section.
- 7.2. Fee Increases. Bear Cloud Software may increase Fees after the first contract year of the Term, including any contract year of any Renewal Term, by providing written notice to Customer at least sixty (60) calendar days prior to the commencement of such Renewal Term, and Schedule A will be deemed amended accordingly.
- 7.3. Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Bear Cloud Software's income.
- 7.4. Payment. All Fees and other amounts payable by Customer under this Agreement shall be paid by Customer within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in US dollars. Customer shall make payments to the address or account specified in Schedule A or such other address or account as Bear Cloud Software may specify in writing from time to time.
- 7.5. Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available, Bear Cloud Software may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law.
- 7.6. No Deductions or Setoffs. All amounts payable to Bear Cloud Software under this Agreement shall be paid by Customer to Bear Cloud Software in full without any setoff, recoupment, counterclaim, deduction, debt or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

8. Intellectual Property Rights.

- 8.1. Services and Bear Cloud Software Materials. All right, title and interest in and to the Services and Bear Cloud Software Materials, including all Intellectual Property Rights therein, are and will remain with Bear Cloud Software and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Bear Cloud Software Materials (including Third-Party Materials) except as expressly set forth in Section 3.1 or the applicable third-party license. All other rights in and to the Services and Bear Cloud Software Materials (including Third-Party Materials) are expressly reserved by Bear Cloud Software and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Bear Cloud Software an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.
- 8.2. Customer Data. As between Customer and Bear Cloud Software, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all

Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 8.3. Customer may request a full export of all Customer Data no more than twice in a given twelve-month period. Bear Cloud Software will provide requested Customer Data in a format mutually agreed to by the parties.

- 8.3. Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data to Bear Cloud Software: (a) to perform the Services; (b) to enforce this Agreement and exercise Bear Cloud Software's rights hereunder; and (c) to use for any lawful purpose.
- 8.4. Consent to Use Customer Marks. Customer hereby grants to Bear Cloud Software a worldwide, non-exclusive, non-transferable license to use, reproduce and display Customer's name and logos in connection with: (a) Bear Cloud Software's performance of its obligations hereunder; and (b) promotional and marketing purposes, including developing promotional press releases, case studies, reports, marketing materials, and using Customer's name and logos in its lists of Bear Cloud Software's current or former customers.

9. Confidentiality.

- 9.1. Confidential Information. In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 9.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: all Bear Cloud Software Materials and the terms of this Agreement are the Confidential Information of Bear Cloud Software.
- 9.2. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.
- 9.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:
- a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
  - b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section;

- c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and
- d) ensure its representatives' compliance with, and be responsible and liable for any of its representatives' non-compliance with, the terms of this Section.

9.4. Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

## 10. Term and Termination.

- 10.1. Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Term").
- 10.2. Renewal. This Agreement will automatically renew for a successive twelve (12) month term with the option to renew for another two terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").
- 10.3. Retention of Customer Data. At Customer's option and upon its written request, Bear Cloud Software will continue to retain the Customer Data for a period of no more than sixty (60) days after the effective date of expiration or termination, as applicable, provided that Customer pays in full all fees due Bear Cloud Software as of the effective date of such expiration or termination.
- 10.4. Termination. In addition to any other express termination right set forth elsewhere in this Agreement:
  - a) Bear Cloud Software may terminate this Agreement, effective on written notice to Customer, if Customer fails to pay any amount when due hereunder, and such failure continues more than five (5) days after Bear Cloud Software's delivery of written notice thereof.
  - b) either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and
  - c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency

law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.5. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;
- b) Customer shall immediately cease all use of any Services or Bear Cloud Software Materials and (i) promptly return to Bear Cloud Software, or at Bear Cloud Software's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Bear Cloud Software Materials or Bear Cloud Software's Confidential Information; and (ii) permanently erase all Bear Cloud Software Materials and Bear Cloud Software's Confidential Information from all systems Customer directly or indirectly controls;
- c) Bear Cloud Software may disable all Customer and Authorized User access to the Services and Bear Cloud Software Materials;
- d) If Customer terminates this Agreement pursuant to Section 10.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Bear Cloud Software will refund to Customer Fees paid in advance for Services that Bear Cloud Software has not performed as of the effective date of termination;
- e) If Bear Cloud Software terminates this Agreement pursuant to Section 10.3(a) or Section 10.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, on receipt of Bear Cloud Software's invoice therefor.

10.6. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Authorization Limitations and Restrictions, Confidentiality, Effect of Expiration or Termination, Surviving Terms, Representations and Warranties, Indemnification, Limitations of Liability and Miscellaneous.

## 11. Representations and Warranties.

11.1. Mutual Representations and Warranties. Each party represents and warrants to the other party that:

- a) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
- b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

- c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
- d) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2. Additional Bear Cloud Software Representations, Warranties and Covenants. Bear Cloud Software represents, warrants and covenants to Customer that Bear Cloud Software will: (a) perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; and (b) exercise commercially reasonable efforts to ensure that the Services are available no less than 99.5% of the time.

11.3. Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Bear Cloud Software that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Bear Cloud Software and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

11.4. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND 11.2, ALL SERVICES AND BEAR CLOUD SOFTWARE MATERIALS ARE PROVIDED "AS IS" AND BEAR CLOUD SOFTWARE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND BEAR CLOUD SOFTWARE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, BEAR CLOUD SOFTWARE MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR BEAR CLOUD SOFTWARE MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 12. Indemnification.

12.1. Bear Cloud Software Indemnification. Bear Cloud Software shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "Customer Indemnitee") from and against any and all losses, damages, liabilities, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees (collectively, "Losses") incurred by such Customer Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an "Action") by a third party to the extent that such Losses arise from any allegation in such Action that Customer's use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement infringes a U.S. Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:



- a) access to or use of the Services or Bear Cloud Software Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in writing by Bear Cloud Software;
- b) modification of the Services or Bear Cloud Software Materials other than: (i) by or on behalf of Bear Cloud Software; or (ii) with Bear Cloud Software's written approval in accordance with Bear Cloud Software's written specification;
- c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Bear Cloud Software; or
- d) act, omission or other matter described in Section 12.2 (Customer Indemnification), whether or not the same results in any Action against or Losses by any Bear Cloud Software Indemnitee.

12.2. Customer Indemnification. Customer shall indemnify, defend and hold harmless Bear Cloud Software and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Bear Cloud Software Indemnitee") from and against any and all Losses incurred by such Bear Cloud Software Indemnitee in connection with any Action by a third party (other than an Affiliate of a Bear Cloud Software Indemnitee) that arise out of or relate to any:

- a) Customer Data, including any processing of Customer Data by or on behalf of Bear Cloud Software in accordance with this Agreement;
- b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Bear Cloud Software's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Bear Cloud Software;
- c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or
- d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

12.3. Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section will not relieve the Indemnitor of its obligations under this Section except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4. Mitigation. If any of the Services or Bear Cloud Software Materials are, or in Bear Cloud Software's opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Bear Cloud Software Materials is enjoined or threatened to be enjoined, Bear Cloud Software may, at its option and sole cost and expense:

- a) obtain the right for Customer to continue to use the Services and Bear Cloud Software Materials materially as contemplated by this Agreement;
- b) modify or replace the Services and Bear Cloud Software Materials, in whole or in part, to seek to make the Services and Bear Cloud Software Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Bear Cloud Software Materials, as applicable, under this Agreement; or
- c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Bear Cloud Software Materials, and require Customer to immediately cease any use of the Services and Bear Cloud Software Materials or any specified part or feature thereof.

THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND BEAR CLOUD SOFTWARE'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND BEAR CLOUD SOFTWARE MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

### 13. Limitations of Liability.

13.1. EXCLUSION OF DAMAGES. IN NO EVENT WILL BEAR CLOUD SOFTWARE OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF BEAR CLOUD SOFTWARE AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED: (A) IF THE CUSTOMER LICENSED THE LICENSED SOFTWARE FROM BEAR CLOUD DIRECTLY, THE TOTAL AMOUNT OF FEES PAYABLE TO BEAR CLOUD SOFTWARE BY CUSTOMER IN THE SIX (6) MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM; OR (B) IF THE CUSTOMER LICENSED THE LICENSED SOFTWARE FROM AN AUTHORIZED RESELLER, THE TOTAL AMOUNT OF FEES PAYABLE TO THE RESELLER BY CUSTOMER IN THE SIX (6) MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14. Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, except for any payment obligation, when and to the extent such failure or delay is caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond such party's reasonable control (a "Force Majeure Event"). Either party may terminate this Agreement if a Force

Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

15. Miscellaneous.

- 15.1. Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- 15.2. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 15.3. Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section):

If to Bear Cloud  
Software:

Address: 69. N. Paradise Parkway, Bld. B. suite 224. Garden City UT 84028]

E-mail: bpeterson@strhelper.com]

Attention: Robert Peterson, Chief Operating Officer

If to Customer:

Address: 403 Beech Mountain Parkway, Beech Mountain NC 28604

E-mail: \_\_\_\_\_

Attention: \_\_\_\_\_

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

- 15.4. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 15.5. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject

matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

- 15.6. Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Bear Cloud Software's prior written consent. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 15.7. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- 15.8. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- 15.9. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 15.10. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted in the federal courts of the United States or the courts of the State of Texas in each case located in the County of Travis, and each party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
- 15.11. Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

- 15.12. Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under the sections entitled Confidentiality; Authorization and Customer Restrictions; or Corrective Action and Notice; would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- 15.13. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.
- 15.14. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**Bear Cloud Software**

**Customer**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Steve Smith, Finance Officer  
Town of Beech Mountain

\_\_\_\_\_  
Date

## Schedule A

### SaaS Options

For municipalities that want full control over the system, we offer our top tier products as Software-as-a-Service based options. These options allow the municipality to fully control all aspects of the cloud-based platform. It provides the full functionality described in the attached white paper. There are two versions of this product:

#### *The Workgroup Product*

The Workgroup Product includes our core software platform, which provides real time reporting and compliance on ALL short term rentals in your jurisdiction. Whereas the Reporting Options above are designed to provide monthly reports, the Workgroup Option is a cloud-based solution that allows the customer to completely control the entire permitting, compliance and reporting systems.

Features include the following:

#### *System*

- Mobile/Tablet/Desktop support
- Open, published API
- Cloud-based, fault tolerant, distributed architecture
- All Validations done by STR Helper staff

#### *Discovery*

- Automated lat/long scraping of ads
- Support for 20+ national sites (including Craigslist)
- Support for local property management sites
- US-based manual listing verification
- Multi-story buildings
- Physical address identification
- Permit number detection/validation in ad
- Mailing to owner mailing address

#### *Permit Registration*

- Custom permit requirements
- On-line self service
- Workflow for approval

Mall merge function

Zones and Caps

#### *Reporting*

20+ canned compliance and permit reports including tax report for non-payers.

Ad hoc, custom reporting capabilities

Export to CSV, XLS, SQL

#### *Communication*

Custom, dynamic non-compliance letter development

Complaint Portal (Noise, Parking, Trash)

Registration Portal when needed

Integrated property manager communication

Ability to handle non-compliant mailings

#### *Municipal Code Enforcement*

On-line complaint portal for community

Price includes the implementation and all validation work, and unlimited web based training. The price is broken into two equal payments. The initial payment and a second payment in six months.

Total Payment \$15,000

# Cover Sheet

04-D-2705

**403 Beech Mountain Parkway, Beech Mountain, NC 28604**

- a. To the best of his/her knowledge and belief, data in this report is true and correct;
- b. The records described in 4 NCAC 19L .0911 are being maintained and will be made available upon request; and
- c. In accordance with Section 101(c)(9) of the Housing and Community Development Act of 1974, the assistance made available under this CDBG grant is not substantially reducing, below the level of support prior to start-up of the CDBG grant reported here, the amount of local financial support for community development activities.

**Title**

**Signature of Chief Elected Official/Authorized Representative**

Date \_\_\_\_\_

### Preparer Information

**Name:** Michelle Ball, High Country Council of Governments

**Address:** 468 New Market Blvd., Boone, NC 28607

**Telephone Number: 828-265-5434**

Email Address: mbali@regiond.org





## DIVISION OF COMMUNITY ASSISTANCE

### CDBG Closeout Forms

Grantee  
Grantee Address  
Grant Number  
Project Name  
1st Project Number  
2nd Project Number  
3rd Project Number  
Period  
Authorized Representative

Town of Beech Mountain

403 Beech Mountain Parkway, Beech Mountain, NC 28604

04-D-2705

Beech Mountain Commerce Fellows

C-1

July 2016 - September 2017

Name

E. Rick Miller

Title

Mayor

Preparer of Information

Name

Michelle Ball, High Country Council of Governments

Address

468 New Market Blvd., Boone, NC 28607

Telephone Number

828-265-5434

Email Address

mball@regiond.org

Property acquired with CDBG funds?

☐ Yes ☒ No

# PROPERTY DISPOSITION REPORT

Category	(1) Description	(2) Date Acquired	(3) Acquisition Cost	(4/5) (6/7) Disposition Date	(8) Current Value	(9/10) (11/12) Disposition Date
I. Real	N/A					
II. Nonexpendable Personal	N/A					
III. Expendable Personal	N/A					

**NORTH CAROLINA DEPARTMENT OF COMMERCE  
CDBG FINAL PERFORMANCE REPORT**

**GRANT NO.** 04-D-2705

**PROJECT NO.** C-1

**Period:**

July 2016 - September 2017

## USE OF PROGRAM INCOME PAGE

Anticipated Program Income	Anticipated Income Report	Program Income Expenditure	Expenditure Activity Code	Expenditure Activity Code
No program income anticipated with this project.				

Will grantee exceed \$25,000 in Program Income during the next 12 months? YES \_\_\_\_ NO X

What is the approximate date for exceeding \$25,000 in Program Income?

Grantee	Town of Beech Mountain		Activity Name	Administration	
Grant Number	04-D-2705		Project:	Beech Mountain Commerce Fellows	
Acct Number	1060			C1	X
Activity Code	13			L1	
Budgeted	\$5,000.00	Expended	\$5,000.00		

  

	Proposed	Actual
Linear Feet		
Properties		
Units, Dwelling		
<b>Households by percentage of HUD Median Family Income Levels</b>		
Above Moderate Income Households > 80%		
Moderate Income Households 51-80%		
Low Income Households 30-50%		
Very Low Income Households <30%		
<b>Total Households</b>	0	0
<b>Persons by percentage of HUD Median Family Income Levels</b>		
Above Moderate Income Households > 80%		
Moderate Income Households 51-80%		
Low Income Households 30-50%		
Very Low Income Households <30%		
<b>Total Persons</b>	0	0
<b>Jobs</b>		
Micro Enterprise		
Female Head of Household		
<b>Hispanic</b>		
American Indian or Alaska Native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native & White		
Asian & White		
Black or African American & White		
American Indian or Alaska Native & Black or African American		
Other Multi-Racial		
<b>Non-Hispanic</b>		
American Indian or Alaska native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native & White		
Asian & White		
Black or African American & White		
American Indian or Alaska Native & Black or African American		
Other Multi-Racial		

Grantee	Town of Beech Mountain	Activity Name	Planning
Grant Number	04-D-2705	Project:	Beech Mountain Commerce Fellows
Acct Number	1058		C1 X
Activity Code	12		L1
Budgeted	\$45,000.00	Expended	\$37,784.43

  

	Proposed	Actual
Linear Feet		
Properties		
Units, Dwelling		
<b>Households by percentage of HUD Median Family Income Levels</b>		
Above Moderate Income Households > 80%		
Moderate Income Households 51-80%		
Low Income Households 30-50%		
Very Low Income Households <30%		
<b>Total Households</b>	0	0
<b>Persons by percentage of HUD Median Family Income Levels</b>		
Above Moderate Income Households > 80%		
Moderate Income Households 51-80%		
Low Income Households 30-50%		
Very Low Income Households <30%		
<b>Total Persons</b>	0	0
<b>Jobs</b>		
Micro Enterprise		
Female Head of Household		
<b>Hispanic</b>		
American Indian or Alaska Native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native & White		
Asian & White		
Black or African American & White		
American Indian or Alaska Native & Black or African American		
Other Multi-Racial		
<b>Non-Hispanic</b>		
American Indian or Alaska native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native & White		
Asian & White		
Black or African American & White		
American Indian or Alaska Native & Black or African American		
Other Multi-Racial		

# CERTIFICATE OF COMPLETION

1. Grantee: Town of Beech Mountain  
 3. Project Name: Beech Mountain Commerce Fellows

2. Grant Number: 04-D-2705  
 4. Project Number: C-1

Program Activity Categories (a)	To Be Completed by Recipient		Total Costs (Col. b + c) (d)	To Be Completed by DOC Approved Total Costs (e)
	Paid Costs (b)	Unpaid Costs (c)		
a. Acquisition			\$0.00	
b. Disposition			\$0.00	
c. Public facilities and improvements				
(1) Senior and handicapped centers			\$0.00	
(2) Parks, playgrounds and recreation facilities			\$0.00	
(3) Neighborhood facilities			\$0.00	
(4) Solid waste disposal facilities			\$0.00	
(5) Fire protection facilities and equipment			\$0.00	
(6) Parking facilities			\$0.00	
(7) Street improvements			\$0.00	
(8) Flood and drainage improvements			\$0.00	
(9) Pedestrian improvements			\$0.00	
(10) Other public facilities			\$0.00	
(11) Sewer improvements			\$0.00	
(12) Water improvements			\$0.00	
d. Clearance activities			\$0.00	
e. Public services			\$0.00	
f. Relocation assistance			\$0.00	
g. Construction, rehab. and preservation activities				
(1) Construction or rehab. of com. & indust. bldgs.			\$0.00	
(2) Rehabilitation of privately owned buildings			\$0.00	
(3) Rehabilitation of publicly owned buildings			\$0.00	
(4) Code enforcement			\$0.00	
(5) Historic preservation			\$0.00	
h. Development financing				
(1) Working capital			\$0.00	
(2) Machinery and equipment			\$0.00	
i. Removal of architectural barriers			\$0.00	
j. Other activities			\$0.00	
lk. Subtotal			\$0.00	
l. Planning	\$37,784.43		\$37,784.43	
m. Administration	\$5,000.00		\$5,000.00	
n. Total	\$42,784.43		\$42,784.43	
o. Less: Program Income Applied to Program Costs			\$0.00	
p. Equal: Grant Amount Applied to Program Costs	\$42,784.43		\$42,784.43	

Description (a)	To Be Completed By Recipient Amount (b)	To Be Completed By DOC Approved Amount (c)
(1) Grant Amount Applied To Program Costs (From Line p)	\$42,784.43	
(2) Estimated Amount For Unsettled Third - Party Claims	\$	
(3) Subtotal	\$42,784.43	
(4) Grant Amount Per Grant Agreement	\$ 50,000.00	
(5) Unutilized Grant To Be Canceled (Line 4 Minus Line 3)	\$ 7,215.57	
(6) Grant Funds Received	\$ 42,784.43	
(7) Balance of Grant Payable (Line 3 Minus Line 6)*		

\* If Line 6 exceeds Line 3, enter the amount of the excess on Line 7 as a negative amount. This amount shall be repaid to DOC by check, unless DOC has previously approved use of these funds.

a) Amount of existing program income:	<u>\$0.00</u>
b) Amount of anticipated program income:	<u>\$0.00</u>
c) If program income exists or is anticipated, describe the proposed application(s):	

Are there any unpaid costs or unsettled third party claims against the recipient's grant? Type "yes" or "no." <u>No</u>	
If yes, in the box below describe the circumstances and amounts involved.	
9. Remarks (For DOC Use Only)	
<input type="checkbox"/>	Please note that all financial records, supporting documents and other records pertinent to the community development program must be retained for a minimum of five (5) years from the date of this letter.
<input type="checkbox"/>	This grant is closed pending receipt and approval of your final audit by the Department of Commerce.
<input type="checkbox"/>	Town
<input type="checkbox"/>	City
<input type="checkbox"/>	County

It is hereby certified that all activities undertaken by the Recipient with funds provided under the grant agreement identified on page 1 hereof, have, to the best of my knowledge, been carried out in accordance with the grant agreement; that proper provisions have been made by the Recipient for the payment of all unpaid costs and unsettled third party claims identified on page 1 hereof; that the State of North Carolina is under no obligation to make any further payment to the Recipient under the grant agreement in excess of the amount identified on Line 7 hereof; and that every other statement and amount set forth in this instrument is, to the best of my knowledge, true and correct as of this date.		
Date  	Typed Name and Title of Recipient's Authorized Representative  <u>E. Rick Miller</u> <small>(Name)</small>  <u>Mayor</u> <small>(Title)</small>	Signature of Recipient's Authorized Representative  <u>✓</u>

11. DOC Approval This Certification of Completion is hereby approved. Therefore, I authorize cancellation of the unutilized contract commitment and related funds reservation and obligation of \$ _____, less \$ _____ previously authorized for cancellation (from Section 6, line 6, page 1).		
Date  	Typed Name and Title of DOC Authorized Representative <u>George Sherrill</u> Director	Signature of DOC's Authorized Representative  <u>✓</u>

**Ordinance No. 2017-08**

**TOWN OF BEECH MOUNTAIN**

**AN ORDINANCE AMENDING ADDRESS NUMBERING**

**WHEREAS**, The Town of Beech Mountain is a municipal subdivision and body politic of the State of North Carolina; and

**WHEREAS**, governing agencies have a responsibility to ensure a high standard for public safety; and

**WHEREAS**, the Town of Beech Mountain's address system is used in emergency situations for calls for Public Safety, Fire, and Emergency Medical Service response; and

**WHEREAS**, strengthening the uniformity of the Town of Beech Mountain's address system will benefit public safety.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF BEECH MOUNTAIN, THAT:**

**SECTION I.** The Town of Beech Mountain Code of Ordinances Section 154.272 'Exemptions and Exceptions' is hereby amended as follows:

**§ 154.272 EXEMPTIONS AND EXCEPTIONS.**

(A) *Exempt signs.* The following signs and/or displays shall be exempt from the regulations of this subchapter:

- (1) Signs not visible beyond the boundaries of the property on which they are located;
- (2) Signs erected by a duly-constituted governmental body;
- (3) Signs erected within a residential home; and
- (4) Historic signs as defined in this subchapter, provided that the message, background, colors, dimensions, orientation, location and design of the support structure of such signs shall not be altered in any way. Normal maintenance, however, is permitted.

(B) *Exceptions.* Particular features or concerns regarding the following types of signs provide compelling reasons for their regulation in a different manner from other signs of similar duration of display or located within a common zoning district.

- (1) *Private traffic directional signs located on private property not to exceed three square feet.* The town finds there is a compelling need for private property owners to be able to control aspects of traffic on private property in order to avoid damage to property and inconveniences and potential dangers caused by



the restriction of ingress and egress to a property by methods such as designating parking spaces and restricting "no parking" areas, identifying "one-way" driveways and the like with the standard, commercially available signage commonly associated with these purposes. Therefore, these signs need not comply with material and style requirements, limitations on number, and other requirements and are exempt from this section.

(2) *Signs erected to prohibit trespassing displayed in accordance with North Carolina State law.* The town finds that there is a compelling need for private property owners to be able to avail themselves of the protection from liability offered by NC state law in the manner prescribed in such laws or statutes. Therefore, these signs need not comply with material and style requirements, limitations on number, and other requirements and are exempt from this section, provided that the number, size, or other features of such signs is not in excess of that prescribed by state law.

(3) *Non-illuminated trade names and graphics which are customarily painted on newspaper and soft drink dispensers and similar outdoor amenities.* The town finds there is a compelling interest in exempting these signs from regulation due to their ubiquitous nature and the impracticality or inability to obtain soft drink dispensers and the like without such trade names or graphics. Therefore, these signs are exempt from the requirements of this section.

(4) *Street addresses.* The town finds that there are compelling needs for the street address (or "911 Address") for each property to be visibly posted in order to better provide for emergency services to the town's residents. The following regulations apply to street addresses:

(a) ~~The street address of each residence must be displayed and visible from the road, as required by the North Carolina State Building Code.~~ *Parties affected.* All structures, residential, multi-family, and commercial are required to display the assigned street number in the manner described in this ordinance.

(b) ~~Where buildings are not visible from the road, the street address shall be posted to a monument, post, mailbox, or other means that is visible from the road and clearly identifies the building. It is recommended that these numbers be located near the driveway or access to the building.~~ *Visibility.* Street numbers shall be displayed so as to be conspicuously visible and legible on the street from both directions. Numbers must maintain contrast to the background and be reflective.

(c) ~~Numbers posted on mailboxes or other monuments that are across the road from the building concerned or are otherwise located off of the property concerned are not adequate for the purpose of this section.~~ *Number type.* All numbers shall be displayed in Arabic form (0, 1, 2, 3, 4, 5, 6, 7, 8, 9).

(d) ~~For new buildings or buildings under construction, address numbers must be posted within a reasonable time after the permit is issued and must be posted prior to any inspections on the building.~~ *Number location.*

*Structures visible from the street.* Where the structure is visible from the road and at such a distance that numbers are legible from the road, numbers shall be affixed to the structure. Numbers shall be reflective and a minimum of three (3) inches high and may be mounted either horizontally or vertically.

*Structures not visible from the street.* Where a structure is not visible from the street or is otherwise situated to make number display on the building ineffective, the number shall be displayed at the access entrance. Numbers may be combined with property or business identification signs. Where signs are perpendicular to the street, numbers shall be displayed on both sides of the sign. Numbers shall be a minimum of three (3) inches high, reflective, and may be mounted either horizontally or vertically.

*Mailboxes.* Numbers of a minimum of three (3) inches in height, reflective, and shall be affixed to both sides of the mailbox serving the primary structure. When the mailbox is clustered with other mailboxes or is across the street from the primary structure, the numbers will be placed on the front of the mailbox. There could be confusion as to the primary structure access by using numbers on the mailbox than prudence would dictate placing the numbers on a post at the primary structure access point on the street. Mailboxes across the street or otherwise located across the street are not adequate for the purposes of this section.

*Trash Bins.* Numbers of a minimum of three (3) inches in height, reflective, and shall be affixed to both sides of the trash bin serving the primary structure.

(e) *Unauthorized Building Numbers Prohibited.* No person shall affix or allow to remain upon any building in the Town of Beech Mountain any different number from the one designated by this Ordinance, with the exception of dates affixed for historical purpose.

**SECTION II. CODIFICATION.** The provisions of Section I of this Ordinance shall be published as appropriate in the Town of Beech Mountain Code of Ordinances as soon as practicable.

**SECTION III. SEVERABILITY CLAUSE.** If any section, part or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, then it is expressly provided and it is the intention of the Town Council in passing this Ordinance that its parts shall be severable and all other parts of the Ordinance shall not be affected thereby and they shall remain in full force and effect.

**SECTION IV. PUBLICATION AND EFFECTIVE DATE.** This Ordinance shall take effect immediately upon its passage and publication according to law.

READ, CONSIDERED, PASSED AND APPROVED at a regular meeting of the Town Council of Beech Mountain, North Carolina, at which a quorum was present and which was held on the \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
E. *Rick* Miller, Mayor

Attest:

\_\_\_\_\_  
Jennifer L. Broderick, MMC  
Town Clerk